Supreme Court, U.S.
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No. _____

In The
Supreme Court of
The United States

October Term 1993

In Re:	)	
	)	
REINERT & DUREE, P.C.,	)	
GARY ROBBINS,	)	
ROBBINS AND ASSOCIATES,	)	
ESTES & ESTES, INC.,	)	
and JAMES C. LANDES,	)	ON PETITION FOR
	)	WRIT OF MANDAMUS
Petitioners,	)	AND/OR PROHIBITION
	)	
vs.	)	
	)	
THE HONORABLE	)	
STEPHEN N. LIMBAUGH,	)	
	)	
Respondent.	)	

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

SUMMERS, COMPTON, WELLS & HAMBURG
Professional Corporation

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COMES NOW Respondent, the Honorable Stephen N. Limbaugh, by and through his counsel, and for his suggestions in opposition to the Petitioners' Petition for

Writ of Mandamus and/or Prohibition, submits the following memorandum.

QUESTION PRESENTED

Whether there is a right to a jury trial in an action to determine whether a creditor in a bankruptcy proceeding has violated the automatic stay imposed by 11 USC §362.

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FEDERAL STATUTES AND RULES

11 USC §362(a):

(a) Except as provided in subjection (b) of this section, a petition filed under §301, 302, or 303 of this title, or an application filed under §5(a)(3) of the Securities Investor Protection Act of 1970 (15 USC 78eee(a)(3)), operates as a stay, applicable to all entities of -

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to

recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

11 USC §1411:

> (a) Except as provided in subsection (b) of this section, this chapter and Title 11 do not affect any right to trial by jury that an individual has under applicable non-bankruptcy law with regard to a personal injury or wrongful death tort claim.
>
> (b) The District Court may order the issues arising [in connection with involuntary bankruptcy petitions] to be tried without a jury.

Rule 38(a) of the Federal Rules of Civil Procedure:

> (a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

TEXT OF CONSTITUTIONAL PROVISIONS AND STATUTES

The Seventh Amendment to the Constitution of the United States:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

STATEMENT OF THE CASE

The underlying lawsuit was originally filed on September 18, 1992 in the United States Bankruptcy Court by David A. Sosne, the duly appointed and acting Chapter 7 Trustee ("Trustee") in the Bankruptcy proceeding of Just Brakes Corporate Systems, Inc. ("Debtor"), being case number, 91-46618-172 (Bkcy. E.D. Mo.). On or about October 22, 1992, Petitioners, the Defendants in the adversary complaint, filed their Jury Demand, Motion to Withdraw Reference to the Bankruptcy Court and Answer. On October 30, 1992, the Honorable James J. Barta, United States Bankruptcy Judge, entered an Order pursuant to Rule 5011 of the Federal Rules of Bankruptcy Procedure, by which all pending matters were transferred to the United States District Court for the Eastern District of Missouri including the Motion for

Withdrawal of Reference and Demand for Jury Trial together with the Trustee's Motion to Consolidate this cause into a companion adversary proceeding now pending before the Honorable Jean C. Hamilton, United States District Judge.[1] Acknowledgment of the transfer was given to the Trustee on or about November 19, 1992 and the underlying case was assigned to the Honorable Stephen N. Limbaugh.

Simultaneously with the filing of the Trustee's Objection and Motion to Remand, the Trustee filed an Amended Adversary Complaint which sought only recovery in the form of damages for alleged willful conduct in violation of the automatic stay. The Amended Complaint alleged that subsequent to the Debtor's filing of a Petition with the Bankruptcy Court, the Petitioners proceeded to continue judicial process

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[1] Case No. 4:92CV2298JCH.

against the Debtor by enforcing against the Debtor and property of the estate a judgment obtained before the commencement of the case; that the Petitioners acted to obtain possession of property of the estate; that the Petitioners acted to enforce their lien against property of the estate and that the Petitioners' actions were to enforce a lien against property of the estate which secured a claim that arose before the commencement of the case. Quite simply, Petitioners improperly continued their execution efforts to recover property of the estate on a claim against the Debtor that arose before the commencement of the bankruptcy case.

On August 2, 1993, the Honorable Stephen N. Limbaugh filed the Memorandum and Order by which the Court, inter alia, granted the Trustee's Motion to Remand after finding there is no entitlement to a

jury trial in an action for violation of the automatic stay imposed by 11 USC §362. See Memorahdum and Order, Appendix A. Thereafter, Petitioners filed a Petition for Writ of Mandamus and/or Prohibition with the United States Court of Appeals for the Eighth Circuit in which they requested that Respondent be compelled to grant Petitioners' request for a jury trial. On September 20, 1993, the Respondent filed his suggestions of Law in Opposition to Petition for Writ of Mandamus and/or Prohibition. On or about September 27, 1993, the United States Court of Appeals for the Eighth Circuit, without opinion, denied the Petitioners' Petition for a Writ of Mandamus and/or Prohibition. On January 13, 1994, the Petitioners filed the instant Petition.[2] In the Petition which

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[2] On December 24, 1993, the Petitioners forwarded to the Clerk of the Court their Petition for Writ of Mandamus and/or

Petitioners have filed with this Court, they have not raised any issues new or different from those which they previously raised in pleadings which they filed with the United States District Court or the United States Court of Appeals for the Eighth Circuit. Insofar as the Respondent correctly determined the issues before him and the Petitioners are not entitled to a jury trial on the question of whether their actions violated the automatic stay, Petitioners' request should be denied.

SUMMARY OF ARGUMENT

The Seventh Amendment does not confer the Petitioners a right to a jury trial in an automatic stay violation proceeding, for such an action has always been deemed equitable rather than legal in nature.

Prohibition. The Petition was returned by the Clerk to Petitioners. The Petitioners resubmitted the Petition to this Court on or about January 13, 1994.

Granfinanciera, S.A. v. Nordbey, 492 U.S. 33 (1989). In addition, there is no statutory provision which allows Petitioners a right to a jury trial in an automatic stay violation proceeding. Because Respondent Limbaugh properly remanded the issues of the automatic stay violation to the Bankruptcy Court, this Court should refuse to issue a Writ and Respondent's Order should be upheld.

ARGUMENT

The sole issue before this Court is whether there exists a right to a jury trial in an action to determine whether a party violated the automatic stay.[3]

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[3] The Petitioners apparently misunderstand Respondent's Memorandum and Order and are confused with respect to the matters raised in the two separate cases which were pending in the District Court. They have misstated the issue to this Court. Although Petitioners assert that the issue before this Court involves the nature of the Debtor's interest in the trademark, in fact the sole issue relates to the right to a jury trial in an automatic stay violation

Petitioners allege that they are entitled to a jury trial pursuant to the Seventh Amendment, Rule 38 of the Federal Rules of Civil Procedure and under Granfinanciera, S.A. v. Nordbey, 492 U.S. 33 (1989). Insofar as neither the Seventh Amendment, Rule 38, nor Granfinanciera entitle Petitioners to a jury trial in an automatic stay violation proceeding, the Court has no basis to issue a Writ and Respondent's Memorandum should be upheld.[4]

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proceeding. Respondent Limbaugh's Memorandum states that the issue relating to Debtor's interest remains pending before Judge Hamilton in the related proceeding in which Petitioners may have an opportunity to have the claims with respect to the fraudulent conveyance and preferential transfer tried to a jury. See Appendix A attached hereto. The action pending before Judge Hamilton has been set for a jury trial on October 3, 1994. As Respondent Limbaugh's Memorandum notes, the Amended Adversary Complaint before the Court stated only a claim for violation of the automatic stay. Id.

[4] Rule 38(a) of the Federal Rules of Civil Procedure states that the right to a jury trial as declared by the Seventh

A. PETITIONERS DO NOT HAVE A SEVENTH AMENDMENT RIGHT TO A JURY TRIAL.

In Granfinanciera, S.A. v. Nordbey, 492 U.S. 33 (1989), the Supreme Court set forth the analysis to employ in determining when the Seventh Amendment right to a jury trial attaches in a bankruptcy case.[5] A proper determination of whether the Seventh Amendment confers a right to a jury trial in an action heard in Bankruptcy Court entails a two-part inquiry:

> First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and

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Amendment or as granted by a federal statutory provision shall be preserved. For the reasons set forth below in parts A and B, respectively, Petitioners are not entitled to a jury trial pursuant to Rule 38.

[5] At issue in Granfinanciera was whether a party who had not filed a claim against the bankruptcy estate had a right to a jury trial in an action by the Trustee to recover an allegedly fraudulent transfer of money.

> determine whether it is legal or equitable in nature.[6]

492 U.S. at 42 (citing Tull v. United States, 481 U.S. 412, 417-18 (1987)). In order for the Court to determine Petitioners' right to a jury trial under the Seventh Amendment, the nature of the claim and the relief requested must be examined. In re Hooper, 112 B.R. 1009, 1011-12 (9th Cir. BAP 1990). Applying this Court's holding in Granfinanciera to the instant case, Petitioners have no Seventh Amendment right to a jury trial on the

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[6] This Court added that "if these two factors indicate that a party is entitled to a jury trial under the Seventh Amendment, we must decide whether Congress may assign and has assigned resolution of the relevant claim to a non-Article III adjudicative body that does not use the jury as a fact finder." Id. Because Petitioners are not entitled to a jury trial under the first two components of the Granfinanciera test, this Court need not make a determination under this third component of the test.

issue of the violation of the automatic stay.

First, an action for violation of the automatic stay is a type of equitable claim for which a party cannot obtain a jury trial. Automatic stay proceedings, like actions to recover preferences and fraudulent conveyances, are core proceedings. See 28 USC §157(b) (1988); see also Budget Service Co. v. Better Homes of Virginia, 804 F.2d 289, 292 (4th Cir. 1986). Unlike actions to recover preferential transfers, however, automatic stay proceedings historically have been equitable actions tried without juries and "the violation . . . charged is an integral part of the federal rights created under the Bankruptcy Code." Budget, supra, at 292. Indeed, Petitioners cite no authority indicating that the issue of an automatic

stay violation would have been determined by a jury trial.

Moreover, the genesis of bankruptcy relief is founded in proceedings brought in English courts of equity. Hooper, supra, at 1012 (citing 1 Norton Bankruptcy Law and Practice, §16.02 (1981)). The automatic stay, and issues surrounding its violation, modification and annulment, are "inextricably bound to and arise only in connection with bankruptcy relief because such issues concern whether the debtor will be granted the protection and benefits of bankruptcy." Id. The importance of the automatic stay is echoed in the legislative history of 11 USC §362 which provides, in part:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor

> to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. No. 95-595, 95th Cong., 1 Sess. 340-42 (1977); S.R.No. 95-989, 95th Cong., 2nd Sess. 54-55 (1978); reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5840, 6296-97. The close tie of the protection and benefits afforded a debtor in bankruptcy to the historically equitable bankruptcy process provides further indication of the equitable roots of automatic stay issues.

An examination of the remedies sought also indicates that the automatic stay violation issue is equitable in nature. The ultimate relief sought by the Trustee is a determination that, as to particular collection efforts, the Petitioners violated the automatic stay when they recovered over $100,000.00 which was received after the post-bankruptcy filing

execution sale. Because of the equitable nature of the remedy sought and the historical equitable roots of automatic stay violation issues, under this Court's test announced in Granfinanciera, the Seventh Amendment does not entitle Petitioners to a jury trial on the issue of whether they violated the automatic stay. Therefore, to the extent Petitioners demand a jury trial pursuant to the Seventh Amendment, their demand finds no support in the law and the matter should be remanded to the Bankruptcy Court for a non-jury trial. Accord Budget, supra, at 292.

B. PETITIONERS DO NOT HAVE A STATUTORY RIGHT TO A JURY TRIAL.

Neither do the Petitioners have a right to secure a jury trial on the issue of the automatic stay violation because of the existence of some statutory provision. There simply is no statutory provision which grants such a right under the facts

of this case. Moreover, Petitioners have not identified a single statute conferring a right to a jury trial in stay violation cases.

The statute governing jury trials in bankruptcy cases is 28 USC §1411, which provides that:

> (a) Except as provided in subsection (b) of this section, this chapter and Title 11 do not affect any right to trial by jury that an individual has under applicable non-bankruptcy law with regard to a personal injury or wrongful death tort claim.

28 USC §1411(a). Subsection (b) then states that the District Court may order the issues arising in connection with an involuntary bankruptcy petition to be tried without a jury. 28 USC §1411(b). While the language of Section 1411 is somewhat ambiguous, it cannot be construed to grant Petitioners a jury trial in an automatic stay violation proceeding. See Granfinanciera, supra, at 40 n.3 (This

Court noting that 28 USC §1411 is "notoriously ambiguous.") This action is not a personal injury or a wrongful death tort claim. Therefore, Section 1411(a) is inapplicable to the instant case. In addition, inasmuch as this action did not arise in connection with an involuntary bankruptcy petition, Section 1411(b) is also not applicable. Accord, In re Hallahan, 936 F.2d 1496 (7th Cir. 1991) (court unwilling to enforce the negative implication of Section 1411(b) that District Courts may not deny jury trials on some issues presented in connection with voluntary petitions). Simply put, Petitioners do not have a statutory right to a jury trial in this action.

The District Court properly remanded the issues of the automatic stay violation to the Bankruptcy Court. The Seventh Amendment does not confer any right to a

jury trial in an automatic stay violation proceeding, for such an action has always been deemed equitable rather than legal in nature. There is no statutory provision which allows Petitioners a right to a jury trial on the issues which the Respondent has ordered be remanded.

CONCLUSION

WHEREFORE, Respondent prays that this Court issue no Writ and the cause relating to the automatic stay violation be remanded as set forth in Respondent's Order.

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APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE:	)	
	)	
JUST BRAKES CORPORATE SYSTEMS, INC.,	)	U.S. Bankruptcy Case No. 91-46618-172
Debtor.	)	
	)	
DAVID A. SOSNE, Trustee,	)	United States Bankruptcy Adversary No. 92-4384
Plaintiff,	)	
vs.	)	
	)	U. S. District Court Cause No. 4:92CV2297SNL
REINERT & DUREE, P.C., n/k/a REINERT, DUREE & CRANE, P.C., ET. AL.,	)	
Defendants	)	

MEMORANDUM AND ORDER

This matter is before the Court on several pending motions regarding this Court's exercise of jurisdiction of this case. Currently pending before the Court are the defendants' motion to withdraw the reference (#5-1), filed November 16, 1992 and motion for summary judgment

(#11-1), filed April 20, 1993; and the plaintiff Trustee's motions to consolidate (#6-1 and #8-1), filed November 16 and December 11, 1992 respectively, and motion to remand (#15), filed April 23, 1993. This memorandum and order will only address the motion to withdraw the reference, the motions to consolidate, and the motion to remand.

On or about September 18, 1992 plaintiff Trustee filed an adversary complaint in the bankruptcy court seeking recovery for violations of the United State Bankruptcy Code, Sections 549 and 550 (preferential transfer of the Debtor's property) and for violations of the automatic stay provisions of Section 362. This complaint shall be referred to as Complaint 1.

On or about October 13, 1992

plaintiff Trustee filed a companion adversary complaint in the bankruptcy court against several of the named defendants in Complaint 1, plus additional named defendants. This complaint also alleged violations of the United States Bankruptcy Code through act(s) of fraudulent conveyance and preferential transfers. This complaint shall be referred to as Complaint 2.

On or about October 22, 1992 the defendants in both complaints filed a jury demand and motions to withdraw the reference. On orabout October 30, 1992 both complaints and their respective motions were transferred to the district court. Complaint 1 and its motions were assigned to the undersigned as Cause No. 92CV2297; Complaint 2 was assigned to Judge Jean C. Hamilton as Cause No.

92CV2298.

On February 5, 1993 Judge Hamilton granted the defendants' motion to withdraw the reference. She determined that the defendants have a right to trial by jury based on the fraudulent conveyance and preferential transfer claims in Complaint 2. Since bankruptcy courts have no statutory authorization to conduct jury trials, the withdrawal of the reference was proper. See, Order of Judge Jean C. Hamilton, filed February 5, 1993, Cause No.4:92CV2298.

Meanwhile, with regard to Complaint 1 in this Court, the defendants' motion to withdraw the reference and the plaintiff Trustee's motions to consolidate were still pending. Plaintiff Trustee then received leave to file an amended adversary complaint (Complaint

1A) deleting all the claims duplicative of Complaint 2. Complaint 1A seeks damages for recovery of violation of the automatic stay only.

The plaintiff Trustee has filed a motion to remand seeking to transfer this action back to the bankruptcy court for disposition. He avers that although actions for violations of the automatic stay are core proceedings, they are not the type of core proceeding which are subject to the Seventh Amendment right to a jury trial. He contends that the instant action does not involve either state created rights nor rights protectable at common law, therefore the defendants are not constitutionally entitled to a jury trial. The defendants, on the other hand, contend that in order for the Trustee to pursue

his claim for violation of the automatic stay, he must first establish that the Debtor had a protected interest in the subject property (trademark) prior to the date the bankruptcy petition was filed (October 15, 1991). They further contend that although the amended adversary complaint eliminates the claim that the January 10, 1991 assignment of the subject trademark by the Debtor was a voidable preference, this issue must first be resolved before the issue of the alleged violation of the automatic stay can be addressed. They argue that they are entitled to have the issue of the voidable preference tried in the district court by a jury.

The amended adversary complaint that presently stands before this Court states only a claim for violation of the

automatic stay. Actions for violations of the automatic stay, while core proceedings, do not entitle the participants to a jury trial. Historically, core proceedings which involve state created rights or rights created by common law have invoked the Seventh Amendment right to trial by jury. Granfinaciera. S.A. v. Nordberg, 492 U.S.33 (1989). However, an action for violation of the automatic stay involves only federal rights created under the bankruptcy code, therefore there is no constitutional entitlement to a jury trial. Budget Service Co. v. Better Homes of Virginia, 804 F.2d. 289, 292(4th Cir. 1986).

As for the defendants' concerns regarding the issue of avoidable preference being tried first in the

district court by ajury, the Court finds no conflict. Presently pending before Judge Hamilton is a similar complaint which presents claims of fraudulent conveyance and preferential transfer. The defendants will get their opportunity to have these claims tried before a jury. Whether these claims will be resolved prior to any hearing on the complaint regarding the alleged violation of the automatic stay is perhaps something to be worked out among the parties, Judge Hamilton and the bankruptcy court.

The plaintiff Trustee has elected to eliminate one of his legal theories for recovery. The defendants have failed to show this Court why he is not entitled to do this. By eliminating one of his claims, the action becomes a summary proceeding which significantly involves

the administration of the Bankruptcy Code; a matter best left to the bankruptcy court to adjudicate.

Accordingly,

IT IS HEREBY ORDERED that the defendants' motion to withdraw the reference (#5-1) be and is DENIED.

IT IS FURTHER ORDERED that the plaintiff Trustee's motions to consolidate (#6-1 and #8-1) be and are DENIED.

IT IS FINALLY ORDERED that the plaintiff Trustee's motion to remand (#15-1) be and is GRANTED. This cause of action, along with any remaining motions, shall be remanded to the United States Bankruptcy Court, Eastern District of Missouri, Eastern Division pursuant to 28 U.S.C. §1452(b).

Dated this 24th day of August, 1993.

/s/ Stephen N. Limbaugh
UNITED STATES DISTRICT JUDGE